



## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-9766-3]**

### **California State Motor Vehicle Pollution Control Standards; Urban Buses; Request for Waiver of Preemption; Opportunity for Public Hearing and Comment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its emission standards for urban bus engines in a series of rulemakings. The rulemakings at issue took place between 2000 and 2005. Principally, these rulemakings set requirements for California's public transit agencies that operate urban buses and other transit vehicles; additionally, the rulemakings set emission standards for new urban bus engines. CARB requests that EPA grant a waiver of preemption pursuant to section 209(b) of the Clean Air Act for the emission standards and related test procedures. This notice announces that EPA has tentatively scheduled a public hearing to consider California's urban bus regulations, and that EPA is now accepting written comment on the request.

**DATES:** EPA has tentatively scheduled a public hearing concerning CARB's request on January 30, 2013, at 10:00 a.m. ET. EPA will hold a hearing only if any party notifies EPA by January 17, 2013, expressing interest in presenting the agency with oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to Kristien Knapp at the e-mail address noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L Street, NW, Washington, DC 20005. If EPA does not receive a request for a public hearing, then EPA will not

hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until March 1, 2013.

By January 25, 2013, any person who plans to attend the hearing may call Kristien Knapp at (202) 343-9949, to learn if a hearing will be held.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0745, by one of the following methods:

- On-Line at <http://www.regulations.gov>: Follow the On-Line Instructions for Submitting Comments.
- E-mail: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2012-0745, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*On-Line Instructions for Submitting Comments:* Direct your comments to Docket ID No. EPA-HQ-OAR-2012-0745. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit

information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA-HQ-OAR-2012-0745. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW, Washington, DC. The Public Reading Room is open to the

public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's Web site is <http://www.epa.gov/oar/docket.html>. The electronic mail (e-mail) address for the Air and Radiation Docket is: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov), the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the <http://www.regulations.gov> website, enter EPA-HQ-OAR-2012-0745, in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver requests. Included on that page are links to prior waiver and authorization *Federal Register* notices. The page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Kristien G. Knapp, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW, Washington, DC 20460. Telephone: (202) 343-9949. Fax: (202) 343-2804. E-mail: [knapp.kristien@epa.gov](mailto:knapp.kristien@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. California's Urban Bus Regulations**

By letter dated November 16, 2009, CARB submitted to EPA its request pursuant to section 209(b) of the Clean Air Act (“CAA” or “the Act”), regarding its urban bus regulations.<sup>1</sup> California’s urban bus regulations principally set requirements for California’s public transit agencies that operate urban buses and other transit vehicles; additionally, the rulemakings set emission standards for new urban bus engines. CARB formally adopted these urban bus regulations during five separate rulemakings that took place between 2000 and 2005: a 2000 rulemaking, a 2002 rulemaking, a 2004 rulemaking, a February 2005 rulemaking, and an October 2005 rulemaking. Collectively, the five rulemakings elevated the stringency of exhaust emission standards and test procedures for heavy-duty urban bus engines and vehicles. The 2000 rulemaking accomplished several feats, including more stringent particulate matter (PM) emission standards for diesel-fueled urban bus engines through the 2006 model year; more stringent mandatory and optional nitrogen oxides (NO<sub>x</sub>) and non-methane hydrocarbon (NMHC) standards for diesel-fueled urban bus engines through the 2003 model year; more stringent optional combined NMHC+ NO<sub>x</sub> and PM standards for alternatively-fueled urban bus engines through the 2006 model year; more stringent primary emission standards for diesel-fueled urban buses through the 2006 model year; tightening of exhaust emission standards for 2007 and later model year heavy-duty urban diesel engines; and adoption of urban bus test procedures and label specifications. The 2000 rulemaking was formally adopted by CARB on November 22, 2000 and May 29, 2001,<sup>2</sup> and became operative under California law on January 23, 2001 and May 29, 2001,

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<sup>1</sup> California Air Resources Board (“CARB”), “Request for Waiver Action Pursuant to Clean Air Act Section 209(b) for California’s Urban Bus Emission Standards,” November 16, 2009.

<sup>2</sup> CARB, “Resolution 00-2,” February 24, 2000; CARB, “Executive Order G-00-060,” November 22, 2000; CARB, “Executive Order G-01-010,” May 29, 2001.

respectively.<sup>3</sup> The 2002 rulemaking allowed for an optional NMHC+ NO<sub>x</sub> standard for 2004-2006 model year diesel-fueled urban bus engines when used in exempted transit fleets with commitments to demonstrate advanced NO<sub>x</sub> after-treatment technology, and established a certification procedure for hybrid electric buses. The 2002 rulemaking was formally adopted by CARB on September 2, 2003,<sup>4</sup> and became operative under California law on November 15, 2003.<sup>5</sup> The 2004 rulemaking added optional exhaust emission standards for diesel-fueled hybrid-electric urban bus engines for authorized transit agencies with NO<sub>x</sub> mitigation plans for the 2004-2006 model years. The 2004 rulemaking was formally adopted by CARB on June 24, 2004,<sup>6</sup> and became operative under California law on January 31, 2004.<sup>7</sup> The February 2005 rulemaking clarified the optional standards for hybrid-electric buses that were allowed in the 2004 rulemaking. The February 2005 rulemaking was formally adopted by CARB on February 24, 2005,<sup>8</sup> and became operative under California law on January 31, 2006.<sup>9</sup> The October 2005 rulemaking amended the urban bus standards to align with California's existing exhaust emission standards for heavy-duty diesel engines. The October 2005 rulemaking was formally adopted by CARB on July 28, 2006,<sup>10</sup> and became operative under California law on October 7, 2006.<sup>11</sup> The revisions to emission standards and test procedures

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<sup>3</sup> CARB, "Secretary of State Face Sheet and Final Regulation Order," effective January 23, 2001; CARB, "Secretary of State Face Sheet and Final Regulation Order," effective May 29, 2001.

<sup>4</sup> CARB, "Resolution 02-30," October 24, 2002; CARB, "Executive Order G-03-023," September 2, 2003.

<sup>5</sup> CARB, "Secretary of State Face Sheet and Final Regulation Order," effective November 15, 2003.

<sup>6</sup> CARB, "Resolution 04-19," June 24, 2004.

<sup>7</sup> CARB, "Secretary of State Face Sheet and Final Regulation Order," effective January 31, 2004.

<sup>8</sup> CARB, "Resolution 05-15," February 24, 2005.

<sup>9</sup> CARB, "Secretary of State Face Sheet and Final Regulation Order," effective January 31, 2006.

<sup>10</sup> CARB, "Resolution 05-47," September 15, 2005; CARB, "Resolution 05-53," October 20, 2005; CARB Resolution 05-61," October 27, 2005; CARB, "Executive Order R-05-007," July 28, 2006.

<sup>11</sup> CARB, "Secretary of State Face Sheet and Final Regulation Order," effective October 7, 2006.

resulting from these five sets of amendments were codified at title 13, California Code of Regulations, section 1952.2 et seq., which was later renumbered to section 2023 et seq.<sup>12</sup>

CARB seeks a waiver of preemption pursuant to section 209(b) of the Clean Air Act for the emission standards and related test procedures contained in its urban bus regulations, as amended through 2000 and 2005.

## **II. Clean Air Act Waivers of Preemption**

Section 209(a) of the Clean Air Act preempts states and local governments from setting emission standards for new motor vehicles and engines. It provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Through operation of section 209(b) of the Act, California is able to seek and receive a waiver of section 209(a)'s preemption. Section 209(b)(1) requires a waiver to be granted for any State that had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966,<sup>13</sup> if the State determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards (this is known as California's "protectiveness determination"). However, no waiver is to be granted if EPA finds that: (A) California's above-noted "protectiveness determination" is arbitrary and capricious;<sup>14</sup> (B) California does not need such State standards to meet

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<sup>12</sup> See *supra* notes 3, 5, 7, 9, and 11.

<sup>13</sup> Because California was the only state to have adopted standards prior to 1966, it is the only state that is qualified to seek and receive a waiver. See S.Rep. No. 90-403 at 632 (1967).

<sup>14</sup> CAA section 209(b)(1)(A).

compelling and extraordinary conditions;<sup>15</sup> or (C) California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.<sup>16</sup> Regarding consistency with section 202(a), EPA reviews California's standards for technological feasibility and evaluates testing and enforcement procedures to determine whether they would be inconsistent with federal test procedures (e.g., if manufacturers would be unable to meet both California and federal test requirements using the same test vehicle).<sup>17</sup>

### **III. EPA's Request for Comments**

EPA is offering the opportunity for a public hearing, and requesting written comment on issues relevant to section 209(b) of the Clean Air Act. Specifically, we request comment on whether: (a) California's determination that its motor vehicle emission standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs such standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.

### **IV. Procedures for Public Participation**

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 1, 2013. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the

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<sup>15</sup> CAA section 209(b)(1)(B).

<sup>16</sup> CAA section 209(b)(1)(C).

<sup>17</sup> See, e.g., 74 FR at 32767 (July 8, 2009); see also *MEMA I*, 627 F.2d at 1126.



public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2012-0745.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as “Confidential Business Information” (“CBI”). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: December 26, 2012.

Christopher Grundle, Director,  
Office of Transportation and Air Quality,  
Office of Air and Radiation.

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